

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARIO NISVIS,

Plaintiff,

- against -

SING SING SUPERINTENDENT PHILIP D.  
HEATH, NURSE ADMINISTRATOR  
BARBARA FURCO, PHYSICIAN'S  
ASSISTANT KWAN, and NURSE SUZETTE  
CAMPER,

Defendants.

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DATE FILED: March 13, 2014

**ORDER**

11 Civ. 2004 (PGG) (GWG)

PAUL G. GARDEPHE, U.S.D.J.:

Pro se Plaintiff Mario Nisvis brings this action pursuant to 42 U.S.C. § 1983, alleging that Defendants showed deliberate indifference to his medical needs while he was incarcerated at Sing Sing Correctional Facility. (Am. Cmplt. (Dkt. No. 23) at ¶ 3) On May 6, 2013, Defendants moved to dismiss under Fed. R. Civ. P. 12(b)(6), (Dkt. No. 26), and this Court referred the motion to Magistrate Judge Gabriel W. Gorenstein for a Report and Recommendation (“R & R”) on July 25, 2013. (Dkt. No. 29) On September 5, 2013, Judge Gorenstein issued a 12-page R & R recommending that this Court grant Defendants’ motion to dismiss and provide Plaintiff leave to file a second amended complaint. (Dkt. No. 30)

The R & R was sent to the parties on September 5, 2013. According to 28 U.S.C. § 636(b)(1)(C), “[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations.”<sup>1</sup> 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. Rule 72(b)(2) (stating that “[w]ithin 14 days after being

<sup>1</sup> The R & R recites the requirement that parties must file objections within fourteen days of service, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, and the consequences for failure to timely object. (Dkt. No. 30 at 11-12)

served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations”). To date, this Court has received no objections to the R & R.

In evaluating a Magistrate Judge’s R & R, a district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). When a timely objection has been made to the Magistrate Judge’s recommendations, “[the district court judge] shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); Razo v. Astrue, No. 04 Civ. 1348(PAC)(DF), 2008 WL 2971670, at \*3 (S.D.N.Y. July 31, 2008) (citing Pizarro v. Bartlett, 776 F.Supp. 815, 817 (S.D.N.Y.1991)). However, “[f]or uncontested portions of the R & R, the court need only review the face of the record for clear error.” Razo, 2008 WL 2971670, at \*3 (citing Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)). Because no timely objections have been filed, this Court will review the R & R for clear error.

Having conducted a review of the R & R, the Court finds that the Report is not clearly erroneous and, in fact, is in conformity with the law. Accordingly, the Report’s recommendations are adopted in their entirety: Defendants’ motion to dismiss is granted, and Plaintiff is given leave to file a second amended complaint addressing the defects discussed in the R & R. Plaintiff must file any amended complaint by April 14, 2014.

The Clerk of the Court is directed to terminate the motion. (Dkt. No. 26) The Clerk of the Court is further directed to mail a copy of this Order to pro se Plaintiff Mario Nisvis, 06-A-5855, Fishkill Correctional Facility, 18 Strack Drive, Beacon, New York 12508-0307.

Dated: New York, New York

March 13, 2014

SO ORDERED.

  
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Paul G. Gardephe  
United States District Judge